

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF ORANGE COUNTY, NORTH CAROLINA

These Comments are filed by Orange County, North Carolina in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Orange County believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed an ordinance or agreement with the cable company. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance that operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

Orange County is a County with a population of approximately 125,000. Our franchised cable provider is Time Warner Entertainment/Advance-Newhouse Partnership. Our community has negotiated cable franchises since 1980.

Our Current Franchise

Our current franchise began on December 29, 2005 and expires on January 1, 2015. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the County in the amount of 5 % of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) soon to be devoted to government access under the terms of the new franchise.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: To provide return feed capability from the two Board of County Commissioner meeting locations in the County, including equipment installation.

Our franchise contains the following institutional network ("I-Net") requirements: To offer high-speed cable modem to the County at its most favored commercial customer rate.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise: Implementing customer complaint procedures, rendering efficient service, and upon request crediting customer accounts for verifiable outages.

Our franchise requires that the cable operator currently provide service to the following areas of our community: Extending service within the County to any household where the number of occupied homes, and homes for which certificates of occupancy have been issued, equals to at least 18 homes per square mile within the measurement starting from the closest usable active point on the cable system.

Our franchise contains the following insurance and bonding requirements: Provide a performance bond or letter of credit in the amount of \$50,000 for customers over 4,000.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider may be required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Remedies and liquidated damages at a maximum one-time fee of \$2,500.

The Franchising Process

The cable system serving our unincorporated County also serves other counties and municipalities within the region. In the mid-90s the communities within the Triangle J Council of Governments joined together to develop a model franchise ordinance for the re-franchising process. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large population, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Subject to the conditions and requirements as prescribed, and applicable federal, state, and generally applicable nondiscriminatory local laws.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Amendments to the ordinance require two readings or public hearings before formal adoption.

Competitive Cable Systems

Our community

- since the late 80s, has never been approached by a competitive provider to provide cable service
- has actively sought out competitive providers, but has not been successful.

Conclusions

The local cable franchising process functions well in Orange County. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Orange County therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Manager

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Committee

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